



U.S. SENATE COMMITTEE ON

Finance

SENATOR CHUCK GRASSLEY, OF IOWA - CHAIRMAN

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For Immediate Release

Monday, Dec. 22, 2003

Grassley, Baucus Launch Review of Whether Certain Multinationals Pay Fair Share of Taxes

WASHINGTON -- Sen. Chuck Grassley, chairman of the Committee on Finance, and Sen. Max Baucus, ranking member, today asked the Internal Revenue Service a series of questions to learn whether multinational corporations that secure special advance pricing agreements are paying their fair share of U.S. taxes. The senators said the increase in these agreements between companies and the IRS over taxes owed prompted their review.

"These agreements involve billions of dollars in taxes," Grassley said. "We have to make sure the IRS isn't giving too much leeway to participating companies at the expense of other taxpayers, and that these companies aren't gaming the system to evade their fair share of taxes. Given the attention to tax shelters, it's time to look at other instances in which companies might be avoiding taxes."

December 22, 2003

The Honorable Mark Everson
Commissioner
Internal Revenue Service
Washington, D.C.

Dear Mr. Everson:

We are writing to you regarding the Advance Pricing Agreement (APA) program that provides taxpayers an opportunity to reach agreement with the Internal Revenue Service (IRS) on methods to determine the prices that related companies charge each other when transferring goods and services.

Congress has long been concerned about multinational corporations paying their fair share of tax. Section 482 provides Treasury broad authority to allocate and distribute income, deductions, credits or allowances to reflect the income of an entity or to prevent tax evasion. Given the

significant increase in APAs in recent years, it is timely for the Finance Committee to review this program and determine whether it is an effective tool in the efforts to enforce section 482.

To assist in this review, we appreciate your response to the following questions:

1) For each company that applied for and received an APA (or similar instrument) in the last ten years:

- a) what transfer pricing method (TPM) did the taxpayer propose, and why;
- b) what TPM did the IRS examination personnel propose during the course of the APA negotiations and why;
- c) what TPM did IRS APA personnel propose in any counteroffer to the taxpayer, and why, and if different from the TPM identified in (b) above, why;
- d) for bilateral cases, what TPM did the Treaty partners use in any Mutual Agreement, and why;
- e) what TPM did the IRS and the taxpayer use in the APA contract;
- f) for each year under the APA, and each year in any rollback period, what is the difference between or among the amount of taxable income the taxpayer would be required to recognize had it utilized the TPM (or TPMs) identified in b) and/or c) above, versus, the taxpayer's taxable income using the actual TPM under the APA, as identified in e) above; and
- g) for each year covered by an APA, and each year in any rollback period, what amounts of Federal income taxes (relating to activities covered by such APA) were actually collected from the taxpayer.

This should be for each year covered by the agreement. Please include Recommended Negotiating Position (RNP) papers; any Memorandum of Understanding or Mutual Agreement; any cover memoranda (or similar documents) in relation to the RNP or APA; and the actual APA contract, including any amendments, renewals, or revisions thereto, for each company.

2) For each company listed in question one, please provide the cycle time for reaching agreement. In addition, please provide the date the agreement was signed as well as the years that it covered. If an APA was used to address previous years, please state the amount of tax that was collected in such years as a result of the APA. Please note if there have since been any additional agreements/renewals that have covered years beyond the original agreement.

3) For each company listed in question one, please note whether the original APA request was for a bilateral APA, and whether a bilateral or unilateral agreement was ultimately signed. Also, please list all companies that, although transacting or otherwise doing business with or within a Treaty-partner country, requested and/or received a unilateral APA; further, for each such company, state the reasons why a unilateral, rather than a bilateral, was permitted.

4) APAs often require a company to provide a yearly report to the IRS ("Annual Report"). Please provide all instances where the Annual Report requirement was waived or modified. Also, list and describe each adjustment to a company's taxable income that has resulted from the Annual Report review process.

5) For the last three years, please list all requests for APAs that were rejected by the IRS, or withdrawn by the taxpayer. Please summarize why they were rejected or withdrawn.

6) The IRS is allowed to charge a fee for an APA. Please provide the fee paid for each company listed in question one. Please advise how this fee is determined and whether this covers all costs of the APA. Are these fees dedicated to the APA program? Please provide the budget year-by-year and the number of FTEs for the APA program for the past 10 years.

7) Please provide the name and title of all professionals currently involved in the APA and Competent Authority programs. Please provide a brief resume for each professional as well as a description of their position. Please provide a summary of all disciplinary actions, if any, brought by or against these professionals in the past three years. Please also explain why the APA program is under the jurisdiction of the Office of the Associate Chief Counsel (International).

8) Please provide the name and title of all professionals that were involved in the APA and Competent Authority programs in the last ten years. Please note those who are still with the IRS and those who have left employment at the IRS. Please provide copies of all requests made by current and former APA and Competent Authority professional employees to the Chief Counsel's Ethics and General Government Law Branch in the last ten years. Please provide copies of all guidance/letters, etc. provided to current and former APA and Competent Authority professional employees in the last ten years from this office. Please list all instances where former professional employees of the APA or Competent Authority have contacted APA or Competent Authority personnel within the last ten years regarding a proposed APA. Please provide the name, firm and company represented.

9) How much federal revenue is lost annually as a result of abusive or improper transfer-pricing practices or income shifting?

10) How does the amount of U.S. taxes paid by foreign-controlled U.S. corporations compare with taxes paid to foreign governments by U.S. companies operating overseas?

11) How does the rate of return on assets of foreign controlled corporations compare with the rate of return on assets of domestic corporations? Please also provide the rate of return on capital employed.

12) How many foreign-controlled corporations paid no Federal income tax for the last five years? How many domestic corporations paid no tax in these years?

13) Please provide data and an analysis of the IRS's "sustension rate" in section 482 cases. Include in this analysis a summary of Examination's proposed section 482 adjustments and modifications by Appeals, litigation and/or Competent Authority for the last five years.

14) Please provide data and an analysis of the IRS's success rate in the U.S. Tax Court and other courts as to section 482. Include in this analysis information on how many cases have been litigated involving section 482; how many cases have been won by the IRS; and in the cases where the IRS lost, the reasons why. Also, include information about the total dollar value of tax

adjustments that have been litigated and how much has been sustained by the courts. Please provide the number of times that section 6662 penalties have been imposed and sustained with companies involved in the APA program.

15) Please provide data and an analysis of the total amount of tax underpayments by U.S. subsidiaries of foreign-owned corporations. Include in this analysis a description of how much of this amount involves section 482 transfer pricing issues, and provide data in support of IRS's estimate.

16) Please provide data and an analysis of how many examinations the IRS has conducted involving section 482 issues from 1990 to date, how many cases have been closed, how many cases are still open, and, on average, how long it takes the IRS to complete a section 482 case. Also, please note those instances where a company asked for an APA after an examination was initiated.

17) In 1990 the House Ways and Means Subcommittee on Oversight conducted a review of transfer pricing issues involving 36 foreign-controlled automobile, motorcycle and electronic distributors that had been operating in the United States. These companies handled billions of dollars in gross sales and yet the Subcommittee found most reported no profits and paid no taxes. Please provide updated tax return data on these companies for the last ten years.

We recognize that some of the material requested is protected by Section 6103. Please provide Section 6103 information where necessary and also, where appropriate, please provide a redacted answer without Section 6103 information. Pursuant to the authority of Internal Revenue Code section 6103(f)(4) the Chairman designates that Pat Heck, Matt Genasci, Ed McClellan, Christy Mistr and Dean Zerbe may have access to Section 6103 material provided under this letter. Thank you for your time and courtesy. We ask for a response by January 26, 2004.

Cordially yours,

Charles E. Grassley
Chairman

Max Baucus
Ranking Member